IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION No.2355/04.

M/s. Larsen & Toubro Ltd. ..Petitioner.

V/s.

Mr. K. Karthikayan Kunju **..**Respondent.

Mr S. K. Talsania, Senior Advocate with Vijay Kantharia and Mahesh Londhe i/b Sanjay Udeshi & Co. for the Petitioner.

Mr R. D. Bhat for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 12. 03. 2007.

JUDGMENT

1. This petition is directed against the judgment and order dated 23rd September, 2002 passed by the Labour Court and order dated 27th July, 2004 passed by the Industrial Tribunal rejecting Revision Application filed by the petitioner. By the order dated 23rd September, 2002, learned Labour Court has directed reinstatement of the respondent workman. The Industrial Court has held that the respondent-workman was entitled to regularization in services.

THE FACTUAL MATRIX

2. The factual matrix reveals that the petitioner is a Civil Construction Company

carrying out construction activities all over the country.

3. The respondent claimes to have joined the petitioner company in the year 1967, initially, as a Truck Driver for two years; and, thereafter, as a Crane Operator. He claims to have worked at Mumbai for about 17 years and, thereafter, according to him, he was transferred from one site to another, as and when work at particular site came to an end. The details of which are given in the complaint.

4. Facts reveal that under Order dated 23rd June, 1998 the respondent was offered employment as Tower Crane Operator at construction site of the petitioner company known as "Thapar House Site" at Mumbai. With the closure of the construction work at the site, by an order dated 10th June, 2000, the Regional (Plant) Manager of the company directed the respondent to report at Delhi Regional Office. In turn, the Delhi Regional Office was directed to depute the respondent at their Anandpur Sahib site as Tower Crane Operator. The respondent was provided work at Anandpur Saheb site as Crane Operator.

5. It appears that on 8th July, 2000 when the complainant, as usual, reported on duty; one Mr. S. P. Singh, Construction Manager, terminated his services without disclosing any reason or without giving termination letter with reasons for termination. The respondent appears to have returned to Mumbai. He claims to have approached the Head Office of the petitioner and apprised them the facts and circumstances under which his services were terminated. But, even at Head Office, Mumbai,the Management of petitioner confirmed termination of his services by site incharge at Delhi.

6. On the above factual matrix, the respondent-workman filed complaint under section 28(1) read with item 1(a), (b),(d), (e), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act (hereinafter referred to as the "M.R.T.U. and P.U.L.P.Act") before the Labour Court at Mumbai, being Complaint (ULP) No. 612/2000 to seek declaration that the petitioner-employer has engaged in unfair labour practice and that he be reinstated in his original post of crane

operator with full backwages with continuity of service with effect from 9th July,2000.

7. The aforesaid complaint was tried by the Labour Court who was pleased to direct reinstatement of the respondent workman with continuity of service and backwages from 9th July, 2000 with all consequential reliefs.

8. Being aggrieved by the aforesaid order of the labour Court dated 23rd September,2003, petitioner-employer preferred Revision Application under Section 44 of the M.R.T.U. & P.U.L.P. Act"); which came to be dismissed by the order dated 27th July, 2004; wherein the Industrial Court has held that the respondent was entitled to regularization in service and confirmed the order of the Labour Court.

9. Being aggrieved by the aforesaid orders of the Courts below writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked by the petitioner to challenge the said orders.

RIVAL SUBMISSIONS:-

10. The learned senior counsel appearing for the petitioner relying upon the Judgment of the Apex Court in the case of **Hindustan Steel Ltd vs. Workmen, 1973 (3) SCC 564** urged that construction sites are temporarily establishments and separately registered under the Local Shops and Establishments Act. In India such sites are treated as independent establishments or business undertakings. That the petitioner is engaged in construction business tendering for various types of construction works having its head office at Mumbai. That the construction activities are carried on all over India and even abroad. They are registered as Establishments under Shops and Establishments Act; wherein the construction is going on. Such construction sites are separate and distinct establishments.

11. The learned counsel for the petitioner submits that the respondent workman used to be engaged on the different construction sites for the specified job on daily wages, that too, for a specific period. As soon as project is over, the services of the workmen connected with the project are terminated. According to him, some time, it happens that

some of the workmen are employed at different construction sites, subject to fresh contract of employment. However, such appointments of workmen are fresh appointments meant for that particular site or project. The peculiarity of the nature of construction business carried on at different sites; and their independence; is sought to be demonstrated on the basis of various judgments of the Apex Court. One of such judgments as referred to hereinabove is of **Hindustan Steel Works Limited (cited supra).**

12. Learned Senior Counsel for the petitioner further urged that, in the case on hand, the Labour Court constituted under Section 6 of the M.R.T.U. and P.U.L.P. Act had no jurisdiction to entertain and try the subject complaint under Section 28 of the Act,in view of the admitted facts, that the services of the respondent-workman were terminated at Delhi. As such in his submission the Labour Court at Mumbai did not have jurisdiction to entertain and try the complaint. Hence the impugned orders are liable to be quashed and set aside.

13. Per contra, learned counsel appearing

for the respondent workman urged that the petitioner though had challenged jurisdiction of the Labour Court, but did not press the said question before the Revisional Court, hence petitioner should not be allowed to raise question, in writ jurisdiction, with regard to the lack of jurisdiction of the Labour Court, before this Court.

14. It is further submitted that the pleadings and documents produced by the respondent during the course of hearing of the complaint leave no room for doubt that the respondent worked in Mumbai Office of the Petitioner, initially, at least for 17 years, and that from time to time he was deputed from one site to another site but he was always brought back to Mumbai. He worked at Thapar House site of the petitioner during the period 26.9.2000 to 23.2.2000.

15. According to the learned counsel for the respondent-workman the memorandum dated 24.3.2000; issued by Mr. M.P. Rao from Thapar House Site to Mr S.P. Singh who was at Delhi, amply demonstrates that the services of the respondent were not terminated but he was transferred from one site to another. The

respondent was simply asked to report at Regional Office, Delhi with direction to divert him to Anandpur Sahib site as Tower Crane Operator. He was allowed to work at that site for some time. However, his services came to be terminated without paying him retrenchment compensation and, therefore, the termination is bad and illegal.

16. The learned counsel for the respondent submits that with regard to the territorial jurisdiction; the law is well settled, in view of various judgments of this Court as well as that of the Apex Court, holding that the complaint can be maintained; where dispute substantially exists irrespective of the place where the cause of action arose. According to him, the second test laid down by the Apex Court is that of residence of the parties. He placed reliance on some of the Judgments, details of which are given hereinbelow:-

Lalbhai Tricumblal Mills Ltd.V/s Vin (D.M.) & Others 1956 I LLJ page 557, Bombay H.C. Div.Bench.

Indian Cable Co. Ltd. V/s. Workmen 1962 FLR page 444,Supreme Court.

Workmen of Shri.Rangavilas Motors (P) Ltd. V/s Sri. Rangavilas Motors (P) Ltd. & Others A.I.R.1967 SC 1040-3.

L.B. Repal Vs. Nagar District Urban Central Co-op. Bank Ltd. 1979 (38) FLR page 279 Bombay High Court (DB).

THE ISSUES:-

The rival contentions have given rise to the following issues:-

(1) Whether the construction sites which are temporarily established and separately registered under the Local Shops and Establishments Act in India can be said to have any functional integrality amongst themselves and/ or they are independent of each other.?

(2) Whether the Labour Cou

constituted under Section 6 of the MRTU and PULP Act has territorial jurisdiction to try the complaint of unfair labour practice under Section 20 of the said Act for termination of services of the respondent at Delhi from the construction site or establishment at Delhi?

(3) Whether the temporarily employed workman is entitled to claim reinstatement, backwages and continuity of service with all consequential benefits?

CONSIDERATION:-

17. Having heard rival parties, fate of this petition revolves mainly around first two issues as framed hereinabove.

AS TO ISSUE (1) :-

18. So far as the first issue is concerned, the law is well settled in the case of **Hindustan Steel Works Construction Ltd. and others Vs. Hindustan Steels Works Construction Ltd. Employees Union and other 1995 (3) S.C.C. 474** that the sites of

construction works are not permanent works in the sense as soon as construction work is over, establishment comes to an end at that particular site. That is how different works or sites or construction projects undertaken by the petitioner represent distinct establishments. They do not constitute a single establishment alongwith others.

19. In the above view of the judgment and in the factual back-ground of the case on hand, it is clear that the respondent workman was transferred from Mumbai to Delhi and was posted at Anandpur Sahib (Delhi) site of the petitioner company i.e. on the independent establishment at Anandpur Saheb (Delhi).

AS TO ISSUE (2):-

20. So far as the second issue is concerned, it is necessary to turn to the pleadings incorporated in the complaint. Relevant paragraphs of the complaint are reproduced hereinbelow.

> 3.2:-"The last drawn wages of the complainant were Rs. 119/- per day all inclusive and ultimately the complainant was working as a Tower Crane Operator. Vide Respondent's letter dated

10.6.2000, the complainant was asked to report at Larsen and Toubro Limited, ECC construction House, Jawahar Bhavan Trust, Pragati Power Project, 220 KV Power Station, Adj. to Gas Turbine Power Plant, Ring Road, New Delhi. Accordingly, the complainant reported for his duties at the above site on 12.6.2000 and worked upto 8.7.2000. Here to annexed and marked Exh.A is the copy of letter dated 10.6.2000 signed by one Shri S.C. Banga and on the very same letter there is an endorsement dated 12.6.2000 directing the complainant to report at Delhi. While the complainant was working at Delhi, one Mr. Anilkumar Sriwastava who is an employee of the respondent company quarrled with the complainant and on 7.7.2000, the said Mr. Anil Kumar Sriwastava brought his own men for operating JCB and told the complainant that his services will be terminated."

3.3:-"On 8.7.2000 when the complainant reported for his duties as usual, Mr. S.P. Singh, the Construction Manager, terminated services of the complainant without disclosing any reason or rhyme or without giving any letter stating the reasons for termination of the services of the complainant."

3.8:-"The complainant states and submits that though his services have been terminated at Delhi, but the permanent residence of the complainant is at Mumbai, the complainant came to be appointed at Mumbai and the respondent has dits registered office at Mumbai and the entire work all over the country and even abroad is being managed and controlled from the registered office of the respondent and therefore this Hon'ble Court has jurisdiction to try and entertain this present complaint."

Prayer Clause:-

(a):-This Hon'ble Court may be pleased to hold and declare that the respondent has engaged in unfair labour practices under item 1(a) (b), (d), (e), (f) and

(g) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, w.e.f. 9.7.2000, as set out hereinabove.

(Emphasis supplied)

(b):-This Hon'ble Court may further be pleased to direct the respondent to reinstate the complainant in his original post of Crane Operator with full backwages, continuity of service and with all consequential benefit w.e.f. 9.7.2000.

21. Perusal of the aforesaid pleadings and the relief claimed, unequivocally, go to show that the termination has taken place at Delhi. The petitioner has also prayed in prayer clause (b) to grant reinstatement in the original post of Crane Operator with full backwages, continuity of service with all consequential benefits w.e.f. 9.7.2000. Prior to 9.7.2000 i.e. on 8.7.2000 the complainant was on the construction site at Anandpur Saheb (Delhi). It is, thus, clear that complainant not only alleges that termination has taken place at Delhi but claims reinstatement w.e.f. 9.7.2000 on the post which was existing in the establishment at Delhi.

22. Factual matrix narrated hereinabove and relief claimed go to show that the respondent-workman did report on his duty as

usual at Delhi. Mr. S. P. Singh, Construction Manager, terminated services of the respondent on 8.7.2000 at Delhi. The respondent right from 9.7.2000 is out of employment. As such, he sought relief of reinstatement in the post of Crane Operator located at work site at Delhi. Thus, keeping the aforesaid pleadings and reliefs claimed, one has to ask question where the cause of action to challenge termination order has taken place? The obvious answer has to be that at Delhi.

23. In the above view of the matter, can it be said that any part of cause of action arose within the jurisdiction of the Labour Court at Mumbai. The answer has to be in negative. Simply because the respondent came to Mumbai and approached the Head Office of petitioner company to seek confirmation of his termination cannot fasten jurisdiction on the Labour Court at Mumbai.

24. It is not the case of the petitioner that termination has taken place because of the instructions of the Head Office which is at Mumbai. It is not his case that the Regional Officer, Delhi was under instructions

from Head Office to terminate services of the petitioner. At any rate, there is no material on record to suggest that the services of the respondent were brought to an end under instructions from the head office located at Mumbai. No part of cause of action, thus, arose at Mumbai.

25. The learned counsel appearing for the respondent workman has cited number of cases. In all those cases, either the services were terminated under the instructions of the Head Office or the action was taken by the Head Office itself. The factual scenario in the case on hand is altogether different. Therefore, none of the cases cited at the Bar on behalf of the respondent can be said to be applicable to the facts and circumstances of the case on hand.

26. Having examining various cases cited by the rival parties, common principle running through all these cases suggest that in order to fasten jurisdiction on the Tribunal or the Court either parties must reside within the jurisdiction of the court or the subject-matter of dispute should substantially arise within the jurisdiction of the Court

taking cognizance of the matter. In the instant case, parties to the dispute, at the time of impugned action of termination, were on the construction site at Delhi. The complainant was at Delhi. The construction site which is independent establishment was at Delhi. The actual termination has taken place at Delhi.

27. In the above view of the matter, I am of the considered view that Labour Court, Mumbai did not have jurisdiction to entertain and try the complaint in question.

28. Having recorded aforesaid finding with respect to the lack of jurisdiction of the court trying the complaint, the issue as to whether the petitioner has put in more than 30 years of service or whether his termination is legal or otherwise, or whether he is entitle for retrenchment compensation have become academic. Once it is held that the impugned orders are without jurisdiction other issues need no consideration on merits.

29. In the result, the impugned orders are liable to be quashed and set aside and the petition is liable to be allowed.

30. It is needless to mention that this judgment and order shall not come in the way of respondent-workman; if he wants to challenge action of the petitioner-employer, in any other legal proceedings in accordance with law since the respondent is being non suited only on the ground of lack of jurisdiction in favour of court below to entertain and try complaint of the respondent workman- -complainant. All the contentions other than dealt with in this order are not examined on merits by this Court. The same are left open for being considered in a properly constituted proceedings.

31. In the above view of the matter, the petition is allowed for the reasons stated. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA,J)